

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

In re:

CDC PROPERTIES I, LLC,

Debtor.

Bankruptcy No. 11-41010-BDL

Chapter 11

Adversary Case No.

**NOTICE OF REMOVAL TO  
BANKRUPTCY COURT PURSUANT  
TO 28 U.S.C. 1452**

OLYMPIA OFFICE, LLC, a New York  
limited liability company; WA  
PORTFOLIO, LLC, a Delaware limited  
liability company; MARINERS  
PORTFOLIO, LLC, a Virginia limited  
liability company; and SEAHAWK  
PORTFOLIO, LLC, a Florida limited  
liability company,

Plaintiffs,

v.

MLMT 2005-MCP1 WASHINGTON  
OFFICE PROPERTIES, LLC, a  
Washington limited liability company;  
MIDLAND LOAN SERVICES, a  
division of PNC BANK, N.A.;  
RAINIER FORECLOSURE  
SERVICES, INC., a Washington  
corporation; JSH PROPERTIES, INC.,  
a Washington corporation,

Defendants.

NOTICE OF REMOVAL TO BANKRUPTCY COURT  
PURSUANT TO 28 U.S.C. 1452 - 1

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COMES NOW, defendant MLMT 2005-MCP1 Washington Office Properties, LLC (“Noteholder”), by and through its undersigned counsel of record, and sets forth the following facts on its behalf:

1. On December 6, 2017, the above-named plaintiffs, Olympia Office, LLC (“Olympia”), WA Portfolio, LLC (“WA”), Mariners Portfolio, LLC (“Mariners”), and Seahawk Portfolio, LLC (“Seahawk”, and collectively with Olympia, WA, and Mariners, “Plaintiffs”), filed a Complaint for Declaratory Relief, Injunctive Relief, Accounting, Breach of Fiduciary Duty, Conversion, Removal of JSH Properties, Inc., and for Tortious Interference with a Business Expectancy (the “Complaint”) against Noteholder, Midland Loan Services, a division of PNC Bank (“Midland”), Rainier Foreclosure Services, Inc. (“Rainier”), and JSH Properties, Inc. (“JSH”, and collectively with Noteholder, Midland and Rainier, “Defendants”) in the Superior Court of the State of Washington in King County (the “Superior Court”), Case No. 17-2-31354-8 SEA (the “Superior Court Action”). A true and correct copy of the Complaint is attached hereto as Exhibit A.

2. Also on December 6, 2017, the Plaintiffs or the Superior Court filed the following pleadings attached hereto respectively as Exhibits B through E: Motion for Order to Show Cause Why Preliminary Injunctive Relief Should Not Be Issued (“Motion”) (Exhibit B); Case Information Cover Sheet and Area Designation (Exhibit C); Order Setting Civil Case Schedule (Exhibit D); and Order to Show Cause (Exhibit E).

3. Exhibits A through E were served on the Defendants on or about December 6, 2017.

4. In the Complaint and Motion, Plaintiffs make allegations against Defendants related to (i) the foreclosure sale of eight commercial real properties located in Washington (four in Olympia, one in Lacey, one in Tumwater, one in Wenatchee, and one in Seattle) (the “Properties”), and (ii) alleged violations of the Plan of

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PURSUANT TO 28 U.S.C. 1452 - 2

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1 Reorganization (the “Plan”) of debtor CDC Properties I, LLC (“Debtor”). Specifically,  
2 Plaintiffs allege, among other things, that Noteholder (the beneficiary under the deeds  
3 of trust on the Properties) and Midland (the Special Servicer) breached the Plan by  
4 manufacturing defaults under the obligations on the loans secured by the Properties (the  
5 “Loans”), warranting injunctive relief precluding Noteholder from proceeding with its  
6 properly scheduled foreclosure of the Properties on December 15, 2017. As detailed  
7 below, this Court explicitly reserved jurisdiction to interpret and enforce the Plan.

8 5. Plaintiffs are not the borrowers under the Loans. The Properties were  
9 property of this Bankruptcy Estate, owned by Debtor, which was the borrower on the  
10 Loans. Noteholder’s predecessor was the secured lender under the Loans secured by  
11 the Properties, and Debtor filed this case after defaulting on the Loans. On November  
12 22, 2011, this Court confirmed the Plan (Dkt. No. 119). Under the Plan, the Loans were  
13 restructured with revised monthly payment amounts and a new maturity date of October  
14 17, 2017, but documents evidencing the Loans, including Notes and Deeds of Trust and  
15 Assignments of Rents, remained in effect pursuant to their terms, except with respect to  
16 the new payment amounts and maturity date. The Loans matured almost two months  
17 ago.

18 6. The Plan also prohibited the Debtor from transferring the Properties unless  
19 contemporaneously therewith, Noteholder was paid in full on the Loans:

20 The Reorganized Debtor may sell or refinance the Real Property, or any  
21 component thereof, at any time *if the proceeds of the sale or refinance*  
22 *are sufficient to pay all Allowed Claims in Classes 1-5 . . .* (emphasis  
added).

23 Plan, Section VII(6), page 14, lines 10-12.

24 7. The Deeds of Trust, which remained in force and effect under the Plan,  
25 also prohibited the transfer of the Properties without the prior written consent of  
26 Noteholder:  
27

1 Borrower shall not Transfer, nor permit any Transfer, without the prior  
2 written consent of Lender, which consent Lender may withhold in its sole  
and absolute discretion.

3 Deed of Trust, Section 9.02. The definition of “Transfer” in the Deed of Trust contains  
4 no applicable exceptions and an outright conveyance of the Properties is a “Transfer”.

5 8. The Plan also contained the following jurisdiction retention provisions:

6 Following the Confirmation Date, the Bankruptcy Court shall retain  
7 jurisdiction over the Reorganized Debtor and the Assets until the Plan is  
8 fully consummated and an order closing the Case is entered by the  
9 Bankruptcy Court.<sup>1</sup> The Bankruptcy Court’s retained jurisdiction shall  
10 give it authority to hear matters for purposes of administering the Plan,  
11 including without limitation: . . . 5. To issue orders in aid of execution of  
12 the Plan and to issue injunctions or take such other actions or make such  
other orders as may be necessary or appropriate to restrain interference  
with the Plan or its execution or implementation by any entity; . . . 8. To  
determine any disputes arising in connection with the interpretation,  
implementation, execution or enforcement of the Plan, the Confirmation  
Order, or any other order of the Bankruptcy Court; 9. To recover all  
Assets, wherever located.

13 Plan, Section XIV, pages 17-18.

14 9. After confirmation of the Plan, Debtor defaulted under the Loans,  
15 Noteholder’s predecessor instituted foreclosure proceedings, and foreclosure sales of  
16 the Properties were scheduled for October 21, 2016. Approximately one month prior to  
17 the foreclosure sales, Plaintiffs, having had no prior connection whatsoever to Debtor,  
18 Noteholder, the Loans or the Properties, were formed without adequate capitalization,  
19 and Plaintiffs and their principals wrongfully induced Debtor, in violation of the Plan,  
20 to transfer the Properties (allegedly worth in excess of \$40 million, according to  
21 Plaintiffs) to Plaintiffs in fractional interests for \$100,000, with the intent of stopping  
22 the foreclosure sales and maintaining control over the Properties through serial  
23 bankruptcy filings. On October 20, 2016, the day before the scheduled foreclosure sales,  
24 the first of the four Plaintiffs, Olympia, filed chapter 11 bankruptcy in the Eastern  
25 District of New York. While Plaintiffs intended on filing serial bankruptcy petitions in

26  
27 <sup>1</sup> This bankruptcy case was closed on February 15, 2012. However, this Court reopened this  
bankruptcy case on December 14, 2016.

1 different bankruptcy courts, the other three Plaintiffs filed bankruptcy together at the  
2 end of November, 2016 to stop Noteholder's motion to enforce the Plan against them  
3 (the "Enforcement Motion"). Noteholder had filed the Enforcement Motion in this  
4 Court based on Debtor's transfer of the Properties to Plaintiffs in violation of the Plan.  
5 Had the other three Plaintiffs not filed bankruptcy on the eve of the hearing on the  
6 Enforcement Motion, the Enforcement Motion would have proceeded before this Court.  
7 For approximately the next year, Plaintiffs' bankruptcy proceedings in the Eastern  
8 District of New York continued, culminating in an evidentiary hearing, after which the  
9 court in the Eastern District of New York dismissed the Plaintiffs' bankruptcy cases to  
10 allow Noteholder to proceed with the foreclosure sales of the Properties. Attached  
11 hereto as Exhibits F and G respectively are (i) Noteholder's Evidentiary Hearing Brief  
12 (which sets forth in detail Plaintiffs' wrongful conduct warranting dismissal of the  
13 Plaintiffs' bankruptcy cases and negating the claims in the Complaint and Motion), and  
14 (ii) the transcript of the Eastern District of New York's ruling conference, in which the  
15 Court dismissed Plaintiffs' bankruptcy cases. The order dismissing Plaintiffs'  
16 bankruptcy cases was entered October 19, 2017.

17 10. On December 7, 2017, the day after Plaintiffs filed the Complaint and  
18 Motion, the Sharon Graham Bingham 2007 Trust, Henry W. Dean, Trustee (the "Trust")  
19 filed its own complaint and motion for injunctive relief in this Bankruptcy Court against  
20 Noteholder and Rainier initiating Adversary Proceeding Number 17-04119-BDL (the  
21 "Trust Adversary Proceeding"). In the Trust Adversary Proceeding, the Trust alleges  
22 essentially the same facts and seeks the same relief against Noteholder as Plaintiffs  
23 allege and seek against Noteholder in the Complaint and Motion. The Trust alleges that  
24 this Court has jurisdiction over such claims under 28 U.S.C. Section 157(b)(1) and under  
25 the retained jurisdiction of the Plan.

26 11. This Notice of Removal is filed pursuant to §§1334 and 1452(a) of Title  
27 28 of the United States Code, without prejudice to Noteholder's denial of the allegations

NOTICE OF REMOVAL TO BANKRUPTCY COURT  
PURSUANT TO 28 U.S.C. 1452 - 5

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1 in the Complaint, assertion of affirmative defenses, objection to the Motion, and  
2 assertion of counterclaims and third-party claims.

3 12. Based on the foregoing and as set forth below, the District Court for the  
4 Western District of Washington has original jurisdiction over the subject matter of the  
5 Superior Court Action pursuant to §1334 of Title 28 of the United States Code. Pursuant  
6 to Local Rule LCR 87(a) of the United States District Court for the Western District of  
7 Washington (the “District Court”), the District Court has issued a standing order  
8 referring all cases under Title 11, United States Code, and all cases arising in or related  
9 to Title 11 cases, to the United States Bankruptcy Court for the Western District of  
10 Washington. Pursuant to Local Rule 9027-1(a) of this Court, Noteholder is properly  
11 filing this Notice of Removal with this Court. This is a core matter pursuant to §157(b)  
12 of Title 28 of the United States Code. The claims of Plaintiffs in the Superior Court  
13 Action fall under the jurisdiction of the Bankruptcy Court, and are also governed by the  
14 United States Bankruptcy Code and the jurisdiction retention provisions in the Plan cited  
15 above. For example, Plaintiffs allege that “Part of the [Plan] specified that no payments  
16 toward the smaller B-Note would be required for a period of eighteen months. Yet,  
17 defendant Midland breached its obligations and made a large payment toward the B-  
18 Note well before the expiration of the eighteen month period.” [Complaint, page 5,  
19 paragraph 3.10.]. Defendants deny Plaintiffs’ allegations. In any case, Plaintiffs’  
20 disputed allegations directly implicate this Court’s jurisdiction under the Plan to  
21 “determine any disputes arising in connection with the interpretation, implementation,  
22 execution or enforcement of the Plan.” Similarly, Defendants’ assertion that Debtor’s  
23 transfer of the Properties to Plaintiffs without repaying the Loans in full violated the  
24 express provisions of the Plan, directly implicates all of the jurisdiction retention  
25 provisions cited above. Accordingly, this Court has jurisdiction over the Superior Court  
26 Action as expressly set forth in the Plan, as well as under §§1334 and 1452(a) of Title  
27 28 of the United States Code.

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PURSUANT TO 28 U.S.C. 1452 - 6

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13. This Notice is being filed within thirty (30) days after service of the Summons and Complaint.

14. Upon removal, Defendants consent to entry of final orders or judgment by the Bankruptcy Court.

WHEREFORE, Noteholder hereby gives notice that the Superior Court Action now pending against the Defendants in the Superior Court is removed from the Superior Court to the United States Bankruptcy Court for the Western District of Washington.

DATED this 11th day of December, 2017.

LANE POWELL PC

By /s/ Abraham K. Lorber  
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*Attorneys for MLMT 2005-MCPI  
Washington Office Properties*

1 **CERTIFICATE OF SERVICE**

2 I certify that on the date indicated below, I caused the foregoing document to be  
3 presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In  
4 accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court  
5 will send e-mail notification of such filing to the ECF recipients of record.

6 I affirm under penalty of perjury under the laws of the United States that the foregoing  
7 is true and correct to the best of my knowledge.

8 SIGNED December 11, 2017, at Seattle, Washington.

9  
10 /s/ Peter Elton

11 Peter Elton  
12 Legal Assistant  
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PURSUANT TO 28 U.S.C. 1452 - 8

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